IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

RCRev..No. 62 OF 2007()

RCA.209/2005 OF THE RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE
RCP.34/2004 RENT CONTROL COURT, PERAMBARA
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REVN. PETITIONER/APPELLANT/RESPONDENT

KUNHETH, S/O. POCKER, AGED ABOUT 62
YEARS, THAPPALLY HOUSE, MENHANNIAM AMSOM AND
DESOM, PERAMBRA, KOYILANDY TALUK,
KOZHIKODE DIST.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS: RESPONDENT/PETITIONER

IBRAYI, S/O. AMMAD, AGED 62 YEARS,
KUTTAMBATH HOUSE, MENHANNIAM AMSOM AND DESOM,
PERAMBRA, KOYILANDY TALUK, KOZHIKODE DIST.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 5.3.2007, THE COURT ON 02/04/2007, PASSED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

R.C.R. NO. 62 OF 2007

DATED THIS, THE 2ND DAY OF APRIL, 2007.

O R D E R

Raman, J.

Petitioner herein is the respondent in R.C.P. 34/2004 on the file of the Rent Control Court, Perambra.

2. The respondent-landlord sought eviction of the petitioner herein under Section 11(2)(b) and (11)(3) of the Kerala Buildings (Lease & Rent Control) Act. He contended that he purchased the petition schedule room from one Kolangaramadathil Chiruthayi Amma, that the petitioner herein who was a tenant in the room got an oral entrustment of the room from him on condition that he vacate the premises when required by him, that the tenant is doing business in the premises, rent was Rs. 1,500/-, that though the rent was paid up to and inclusive of October, 2000, thereafter from 6.11.2000 rent is in arrears, that the landlord has no source of income for his livelihood, that he bona fide requires the petition schedule room for conducting a chappal business, that though on several occasions he demanded vacant possession of the premises, the respondent did not adhered to the same, that he was earlier doing chappal business in a room

belonged to one Moideen Haji possession of which was surrendered by him in compliance of an order in a rent control proceeding, that the tenant has got enough landed property from where he is getting income, that he is in possession of other buildings in Perambra town, there are other vacant rooms also available for doing his business, that the petitioner has no other room or landed property in his possession and that he has done all the arrangements for starting the business in the petition schedule room. He also sought for a direction to pay the arrears of rent from 6.11.2000 and to award costs of the rent control petition.

3. The tenant, on the other hand, disputed the mont0hly rent as alleged in the petition. He also denied that he is in arrears of rent. The bona fide need as alleged is also denied. According to the tenant, the landlord is having a foot wear shop named Max, Hilton and Karona and the allegation that the tenant has got other buildings as alleged in the petition is also denied. It is contended that he has no other source of income other than the income derived from the business that he is conducting in the petition schedule premises and that in spite of bona fide enquiry, he could not find a suitable place for the purpose of his business.

4. The petitioner himself got examined in the case as PW.1 besides marking Exts. A1 to A5. On the respondent's side, he himself was

examined as RW.1 and Exts.B1 to B6 were marked. Court exhibit Ext.C1 was also maked in evidence.

5. PW.1 gave evidence in support of the contention in the Rent Control Petition. His testimony supports the case as put forth by him. It was found by the Rent Control Court, after meticulous scrutiny of the evidence on record, that rent was in arrears and accordingly, ordered eviction under Section 11(2)(b) of the Act. As regards the bona fide need, the specific case of the landlord was that he needs the building for conducting a chappel business. Even though it was contended by the tenant that the landlord has got own room and own business in the building, of which the petition schedule room is a part, the landlord denied the same and contended that the said room is in occupation of his son. He denied of being in possession of any other room. It is true that in the notice issued, a shop room on the northern boundary of the petition schedule building was shown to be in the possession of Ibrayi, the landlord. But that by itself was not found to be not a fetter to the case of the landlord. It was in this regard that the court below appreciated the evidence on record adduced by PW1 that a building is in the possession of his son who is doing business. Even though it was alleged that PW.1 is aged 68 years and after he was evicted from the premises where he was carrying on business, he did not choose to

restart any business for quite some time as a ground to show that the claim now put forward is bereft of bona fides, it was rightly found by the court below that merely because he did not think of restarting a business immediately after vacating from the rented premises by itself is not a reason to reject the ground of bona fide need. Likewise, the landlord is aged 68 years is also not a reason to deprive of his right to get eviction of the premises for starting a business of his own. The revision petitioner has no case that the landlord is not having sufficient funds for the purpose of starting the business. Even though it was alleged that the landlord has got other income, there is no independent evidence to support the said contention. Therefore, on an overall appreciation of the entire evidence, it was found that the bona fide need also stands proved.

6. Coming to the benefit under the proviso to Section 11(3), though the tenant had contended that the business in the premises in question is his main source of income, in Ext.C1 report, the Commissioner has stated that in the property of the tenant, in which his house is situated , there are 80 yielding coconut trees. The tenant who was examined as RW.1 also admitted in cross examination that he has got two acres of property from which he is getting 3000 coconuts per year. When compared to the income he gets from the landed property, it cannot be said that the income derived

from the business in the tenanted premises is the main income. Thus, this is a case where the tenant has failed to prove that his main source of income is from the business that he is conducting in the tenanted premises. According to the landlord, the tenant is having possession of two rooms bearing No. 693/X and 694/X in Perambra town, where other vacant rooms are also available. But the tenant contended that he has transfered the same to his wife and children and there is no other vacant room available for his business. In Ext.C1 report, the Commissioner has stated that Room No. X/693 and X/694 are about 150 metres away from the petition schedule premises at the western side of the road at Perambra. Room No. X/693 was found locked and in the other room one 'Swami Driving School' was found functioning. Ext. B4 produced by the tenant is a gift deed dated 23.7.2004 executed by the tenant in favour of his wife and children which only shows that the room which he had is transfered by way of gift to his wife and children. Ext.B5 also shows that rooms are in the possession of tenants. Therefore, the contention that the tenant was in possession of some other rooms was found against. But the fact remains that there are other rooms available in the locality. The landlord, while examined as PW.1, has pointed out many rooms which are lying vacant. Exts. A4 and A5 were also produced in support thereof. It has also come out in evidence that

serious enquiries were not made by the appellant/tenant regarding the availability of alternate building in the locality.

7. On an overall consideration of the evidence in the case, the Rent Control Court found that there are rooms available in the locality and hence the tenant is not entitled to the protection under the second proviso to Section 11(3) of the Act. On appeal, the appellate authority appreciated the evidence on record but could not find any ground to interfere with the finding rendered by the Rent Control Court.

8. We have heard the learned counsel for the revision petitioner. But nothing was brought on record to assail the concurrent finding of the court below on any ground. We have also noticed that the revision petitioner is none other than the brother-in-law of the landlord who was also carrying on business in chappal. The landlord sought eviction with a view to start a business of his own in the tenanted premises and such bona fides have been proved based on materials on record, as appreciated by both the courts below. The revisional court, under Section 20 of the Kerala Rent Control Act cannot interfere with such findings in the absence of any strong and valid reasons. We find no merit in the revision. Accordingly, it is dismissed.

9. At this stage, learned counsel for the revision petitioner sought for

at least six months' time to surrender vacant possession of the petition schedule premises. After considering such submission, we think a reasonable time can be granted to the revision petitioner to surrender vacant possession. Accordingly, we grant three months time to the revision petitioner/tenant to surrender vacant possession of the premises on condition that he shall file an undertaking in the form of an affidavit before the executing court within a month from today, undertaking to surrender vacant possession of the premises on or before 3.6.2007, that he shall pay or deposit the entire arrears of rent, if any, within one month from today and continue to deposit the amount equivalent to monthly rent until vacant possession is given and that he shall not induct any third parties in to the petition schedule premises. If the revision petitioner commits any default in complying with any one of the conditions as aforesaid, the landlord will be at liberty to proceed with the execution steps.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-